

**CASCADE COUNTY PLANNING BOARD**

PLANNING DEPARTMENT: Report and Recommendation

REGARDING: Rezone Request and Text Amendment, Public  
Hearing Scheduled for May 27, 2020

SUBJECT: Cascade County Zoning Regulations (“CCZR”),  
Section 2 Definitions, Section 4 Zoning Map, and  
Section 18.1 Uses Permitted upon Issuance of an  
Unclassified Use Permit

PRESENTED BY: Sandor Hopkins, Planner, Cascade County Planning  
Department

**GENERAL INFORMATION**

Applicant/Owner of Record: NorthWestern Energy

Subject Parcels: See **Exhibit A**

Existing Zoning: “OS” Open Space

Requested Action: (1) Zoning Map Correction to rezone subject  
parcels from “OS” Open Space to “A” Agriculture  
(2) Zoning Text Amendment to add “Data Center”  
to Sections 2 and 18.1 of the CCZR

Existing Land Use: Used for “Utility Installations, Major,” or  
undeveloped

**Surrounding Zoning and Land Uses:**

| Direction | Parcel Number (s) | Zoning District | Existing Land Use     |
|-----------|-------------------|-----------------|-----------------------|
| North     | 0002733400        | RR-5            | Grazing               |
|           | 0002732300        | RR-5            | Utility/Undeveloped   |
|           | 0002732200        | RR-5            | Grazing/Fallow        |
|           | 0002680700        | RR-5            | Vacant/Grazing/Fallow |
|           | 0002694800        | RR-5            | Vacant/Grazing/Fallow |
|           | 0002694900        | RR-5            | Vacant/Grazing/Fallow |
|           | 0002693600        | A               | Vacant/Grazing/Fallow |
|           | 0002697000        | I-2             | Vacant/Grazing/Fallow |
|           | 0002698125        | I-2             | Utility/Undeveloped   |

|       |            |     |                                 |
|-------|------------|-----|---------------------------------|
|       | 0002698150 | I-2 | Vacant/Grazing/Fallow           |
|       | 0002698100 | I-2 | Vacant/Fallow                   |
|       | 0002699450 | I-2 | Utility/Undeveloped             |
|       | 0002699200 | I-2 | Vacant/Grazing/Fallow           |
| East  | 0005358700 | A   | Vacant/Grazing                  |
|       | 0002731325 | A   | Utility/Ryan Dam                |
| South | 0002713640 | OS  | Vacant                          |
|       | 0002713600 | OS  | Vacant                          |
|       | 0002713750 | OS  | Giant Springs/Park              |
|       | 0002713400 | OS  | Giant Springs/Park              |
|       | 0002713785 | OS  | Giant Springs/Park              |
|       | 0002715225 | OS  | Giant Springs/Park              |
|       | 0002714800 | OS  | Utility/Undeveloped             |
|       | 0002716500 | OS  | Utility/Undeveloped             |
|       | 0002697150 | OS  | City of Great Falls/Rec         |
|       | 0002696050 | OS  | City of Great Falls/Rec         |
|       | 0002696100 | OS  | City of Great Falls/Rec         |
|       | 0005371400 | OS  | City of Great Falls/Rec         |
|       | 0005371500 | OS  | City of Great Falls/Rec         |
|       | 0005371350 | A   | Vacant/Grazing                  |
| West  | 0002700500 | I-2 | Farmstead                       |
|       | 0002700700 | I-2 | Vacant/Grazing/Fallow           |
|       | 0002711310 | I-2 | City of Great Falls/Undeveloped |

### **SPECIAL INFORMATION**

The purpose of the Map Correction is to rezone fourteen (14) tracts from Open Space to Agricultural. The subject parcels are along the northern side of the Missouri River, including those containing the active hydroelectric Black Eagle and Rainbow power sites. The zoning designation is contrary to the dominant use of the land, a power generating facility regulated by the Federal Energy Regulatory Commission, and the local jurisdiction. The map exhibit and list of parcels effected by the rezone are attached as **Exhibit A**.

The purpose of the Text Amendment is to add the following definition to Section 2 of the CCZR:

**Data Center: A facility hosting a large group of networked computer servers typically used by organization for the remote storage, processing, or distribution of large amounts of data.**

This new definition is proposed to be associated with a callout in Section 18.1, which will simply read “**(14) Data Center.**”

In early 2020, the Cascade County Planning Department was approached by a consultant asking questions regarding development requirements and mapping for dam failure inundation areas for a data center project at the old Rainbow Dam Powerhouse. During the course of this review, it was determined that while the structure appeared to be outside of the mapped hazard areas, the



zoning of the hydroelectric sites as Open Space would not support the proposed data center use under current County Zoning Regulations, and that the Regulations lacked a specific definition or appropriate use category for a facility of this type.

## **ZONING ANALYSIS**

The Planning Department will consider each of the following outlined below as follows:

- a) Map Correction from Open Space Zoning District designation to Agricultural Zoning District designation; and
- b) Text Amendment for Data Center addition to Sections 2 and 18.1 of the CCZR.

Pursuant to MCA § 76-2-203, the following criteria and guidelines must be considered in conjunction with all rezoning proposals:

### **Criteria 1:    **The rezoning is made in accordance with the five (5) listed goals in the Growth Policy.****

The 2014 Cascade County Growth Policy (CCGP) contains five (5) goals which the policy defines as a direction of the Growth Policy. Each Goal also includes a subset of Objectives which the Growth Policy defines as a more narrowly defined and concrete expression of community intent. The five (5) goals and their related objectives are:

#### **Goal 1:           **Sustain and strengthen the economic well-being of Cascade County citizens.****

##### **Objectives:**

- A. Stimulate the retention and expansion of existing businesses, new businesses, value-added businesses, wholesale and retail businesses, and industries including agriculture, mining, manufacturing/processing and forest products.
- B. Stabilize and diversify the county's tax base by encouraging the sustainable use of its natural resources.
- C. Identify and pursue primary business development that complements existing business, which is compatible with communities, and utilizes available assets. Identify and pursue targeted business development opportunities to include, but not limited to, manufacturing/heavy industry, telecommunications, and youth/social services.
- D. Promote the development of cultural resources and tourism to broaden Cascade County's economic base.
- E. Foster and stimulate well-planned entrepreneurship among the county's citizenry.

- F. Promote a strong local business environment. Encourage and strengthen business support mechanisms such as chambers of commerce, development organizations and business roundtable organizations.
  - G. Improve local trade capture for Cascade County businesses. Promote local shopping as well as well-planned businesses and new businesses.
  - H. Network with and support other economic development efforts in the region and statewide, in recognition of Cascade County's interdependence with other communities and to leverage available local resources.
  - I. Encourage the growth of the agricultural economy.
  - J. Stimulate the growth of the economy by encouraging the use of alternate methods of energy production.
- a) The Map Correction from Open Space to Agricultural provides an economic benefit to the current landowner, NorthWestern Energy, and future landowners. The existing area includes several hydroelectric dams which predate the CCZR and would fall under the following zoning use categorize: "utility installations, major" and "power plants." Current zoning on the subject parcels only allows for "utility installations, minor." Thus, the current Open Space District zoning on these parcels does not reflect the current or past usage. As non-conforming uses are prohibited from expansion, correcting the current Open Space zoning on the subject parcels will allow these parcels to become conforming and will allow the uses to expand without being in violation of the CCZR. Even with a rezone, these parcels are currently subject to Conservation Easements (Reel 327 Doc 810-811), which precludes most development. The rezone of the parcels to the Agricultural District and a revocation of the Conservation Easements would allow NorthWestern Energy to sell those parcels to private developers or expand upon the current uses to support community growth and demand, which would provide an opportunity for economic development in support of Objectives A and C.
- b) Adding the "Data Center" use to the Unclassified Use Permit category would generally support Goal 1, specifically Objectives A, C, E, F, G, and H and could be inferred to support Objective B based on potential location of these facilities and the source of energy a facility might use. Bolstering telecommunications and data sectors by providing improved development opportunities would have a positive benefit to the County, as the presence of several hydroelectric power plants can provide an inexpensive and abundant source of renewable energy that meets the demand a large-scale data center would require, e.g. water for cooling. Smaller operations could also stand to benefit from the accommodation of the Zoning Regulations in this regard. It is not anticipated that this would support Objectives D or I, with no perceived direct benefits to the enhancement of tourism or agriculture. Use of alternate energy sources could be positively impacted by onsite use of solar and wind resources but this proposal would only be expected to

indirectly impact growth in that sector in support of Objective J, unless a proposed site sourced energy directly from the hydroelectric power plants.

**Goal 2:      Protect and maintain Cascade County's rural character and the community's historic relationship with natural resource development.**

**Objectives:**

- A. Foster the continuance of agriculture and forestry in recognition of their economic contribution and the intrinsic natural beauty of grazing areas, farmlands and forests.
  - B. Preserve Cascade County's scenic beauty and conserve its forests, rangelands and streams, with their abundant wildlife and good fisheries.
  - C. Preserve Cascade County's open space setting by encouraging new development to locate near existing towns and rural settlements and by discouraging poorly designed, land subdivisions and commercial development.
  - D. Assure clean air, clean water, a healthful environment, and good community appearance.
  - E. Support the development of natural resources including but not limited to timber, mining, oil and gas production, and renewable energy production.
  - F. Continue to work with federal and state agencies to redevelop properties within Cascade County which are currently undergoing Superfund and Brownfields processes.
- a) The Map Correction proposal from Open Space to Agriculture is not expected to adversely impact Goal 2 overall, however could be potentially detrimental to Objective B by removing additional preservations on the north bank of the Missouri River in that area. However as discussed previously, the Conservation Easements will continue to restrict development regardless of Zoning. Yet, the loosening of restrictions related to the underlying zoning could have other long-term consequences such as allowing greater development of the hydroelectric sites and appurtenant developments by the property owners, in accordance with what is allowable in the Agricultural District. For example, the Open Space District allows only minor utility installations, however the Agricultural district allows major installations as well as certain power generation facilities by right.
- b) The addition of a "Data Center" use is not anticipated to positively impact this particular Goal, nor is it anticipated that facilities of this type would be more detrimental to this goal than other principal uses in other zoning districts.

**Goal 3:        Maintain agricultural economy**

**Objectives:**

- A. Protect the most productive soil types.
  - B. Continue to protect soils against erosion.
  - C. Protect the floodplain from non-agricultural development
  - D. Support the development of value-added agricultural industry in Cascade County utilizing the products from the regional area.
- a) The Map Correction is not anticipated to support the specific objectives of this goal. Changing the underlying Zoning could potentially support this goal, and allow for broader uses on the properties not encumbered by the Conservation Easements, however there will continue to be significant restrictions on the land use through other agencies with vested interest in the hydroelectric power generation and dam facilities.
- b) It is not expected that adding a “Data Center” use to the Regulations would have a positive impact on Goal 3, however would not be expected to have a uniquely detrimental impact on this goal either.

**Goal 4:        Retain the presence of the U.S. Military in Cascade County**

**Objectives:**

- A. Encourage the federal congressional delegation to actively support maintaining the current mission status at a minimum.
  - B. Promote the location of additional military missions in Cascade County.
  - C. Encourage the reactivation of the runway at Malmstrom Air Force Base for fixed wing operations.
  - D. Refer to the Joint Land Use Study for resolving conflicts and promoting mission compatible development.
- a) It is not anticipated that either proposal would have a unique positive or negative impact on the U.S. Military mission in the County.
- b) Same as above.

**Goal 5:      Preserve and enhance the rural, friendly and independent lifestyle currently enjoyed by Cascade County's citizens.**

**Objectives:**

- A. Maintain Cascade County's citizen's independent lifestyle and minimize local governmental intervention, to the extent possible, consistent with the requirements of a continually evolving economy and constantly changing population.
  - B. Preserve and promote Cascade County's rich cultural heritage, rooted in natural resource development and reflected in its numerous cultural/historic sites and archaeological areas.
  - C. Promote fire prevention measures throughout the county, giving special emphasis to the extreme fire hazards present at the wild land/urban interface.
  - D. Encourage the continued development of educational programs and facilities, recreational opportunities and spaces and health services for all county residents.
- a) As this Map Correction is specific to properties owned by NorthWestern Energy, it is not anticipated that this will provide a benefit to Cascade County's citizens as a whole. The underlying zoning designation of the parcels with the hydroelectric facilities is unlikely to generate an impact to this goal as these facilities are already accommodated by § 18 of the zoning regulations (Obj B). It is possible that if the Conservation Easements were to be removed from the property, the rezoning from Open Space to Agriculture could have a detrimental impact on Objective D, however the rezone alone is unlikely to affect any changes to the physical characteristics or allowable uses on the subject properties.
- b) Adding a "Data Center" use to the regulations is expected to have a positive impact on Objective A. Data centers can potentially provide critical infrastructure to rural areas, as well as developed areas that improve access to modern information technology and support citizen's independent lifestyle, as well as accommodating emerging technologies and needs. It is not expected that this proposal will have either a positive or negative impact on the remaining objectives of this goal as it does not appear related to these objectives.

**OVERALL COMPLIANCE**

Determining compliance with the Growth Policy for the proposed Zoning Regulation changes demonstrates the inherent tensions and contradictions between various goals and objectives. The intentionally broad language used in forming goals naturally leads to statements that are capable of multiple interpretations. Fully meeting one goal may mean that a land use action fully contradicts another. Staff also remains mindful that the Growth Policy and related court decisions make it clear that Growth Policies are not regulatory documents and may not be used to condition or deny a land use action.

The proposal to correct the Zoning Map will bring portions of the property into compliance with the Zoning Regulations, such as the facilities that are accessory to the Power Plant use and meet the definition of a Major Utility Installation, which is not permitted as an Unclassified Use Permit or as a use in the Open Space District. Additionally, the rezone will allow the owner of those properties to derive economic benefit from the expanded use of the properties with regard to zoning. In this regard the map correction will directly support Goal 1 and could potentially support Goal 3 if the land was used for either agriculture or value-added agricultural production. Goal 2 could be detrimentally impacted through the removal of the restrictive Open Space Zoning District, however the electrical infrastructure in the area already detracts from the open space setting, and allowing an expansion of use on the property will support the development of natural renewable energy resource, also in support of Goal 5. Goal 4 is not anticipated to be impacted by this Map Correction.

With these principles in mind, the Department finds the proposed “Data Center” addition generally complies with the 2014 Cascade County Growth Policy. The addition of “Data Center” appears to directly support the Growth Policy Goals 1 and 5, while remaining clear of any concerns that could detrimentally impact Goals 2, 3, or 4. It is expected that this proposal would provide tangible economic benefits to the County.

Criteria #2:

**Whether the zoning regulations have been designed to secure safety from fire and other dangers.**

Staff has not found where either proposal has been designed to secure safety from fire and other dangers, however, has not found where the proposal would have a detrimental impact on this criterion either. Changing a mapping designation does not have any impact on the physical characteristics of a property, however a data center could provide an increased opportunity for a fire given the substantial power draw. While fire codes are established by the State, the Department recommends assessing potential mitigation standards so that a Data Center would not pose an increased hazard to residences.

Criteria #3:

**Whether the zoning regulations have been designed to promote public health, public safety, and general welfare.**

Staff has not found where the Map Correction would promote public health, safety and general welfare, however, does not anticipate a negative impact to this criterion either. The proposed addition of the Data Center is unlikely to promote public health and safety, however, is likely to have a positive impact on the general welfare as this will accommodate additional further development of critical, modern infrastructure.

Criteria #4:

**Whether the zoning regulations have been designed to facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements.**

It is not anticipated that either of these proposals will have a detrimental impact on this criterion given their scope.

Criteria #5:

**Whether the zoning regulations have been designed to provide adequate light and air.**

It is not anticipated that either of these proposals will have a detrimental impact on this criterion given their scope.

Criteria #6:

**Whether the zoning regulations have been designed to address effects on motorized and non-motorized transportation systems.**

It is not anticipated that either proposal will have a detrimental impact on this criterion. Development restrictions in the area of the Map Correction and the general low transportation requirements of Data Centers will render transportation concerns negligible.

Criteria #7:

**Whether the zoning regulations have been designed to be compatible with urban growth in the vicinity of cities and towns that at a minimum must include the areas around municipalities.**

This proposal is unlikely to have an impact on urban growth in the vicinity of Great Falls, as this area is already restricted by Conservation Easement and other standards. Changing to Agriculture zoning would create an increase of urban growth if the Conservation Easement was dissolved. The Data Center use is not a broad zoning Correction, but rather designed to fit where it is needed and reflect modern land use change, it is not anticipated that this would have an impact on the growth of Great Falls or other municipalities, but in fact could provide a boon to the development of those areas.

Criteria #8:

**Whether the zoning regulations have been made with reasonable consideration to the district's peculiar suitability for particular uses.**

The Map Correction has been designed to both accommodate future growth while not allowing for unregulated development. The Agricultural District was chosen as it is adjacent to existing agricultural lands, but would provide better regulatory control than rezoning to the also adjacent



Heavy Industrial District. The Agricultural District better reflects the intended use of the parcel, as land held in Conservation Easement, similar to many other Conservation Easements throughout the County, is located in the Agricultural District.

The “Data Center” use proposal is not specific to a district, and has little bearing on this criteria. Doesn’t this expand and

Criteria #9:

**Whether the zoning regulations have been made with a view to conserving the value of buildings.**

It is not anticipated that the Map Correction will have an impact on the value of the existing buildings. Data Centers, however, make use of heavy ventilation systems that make noise. The Department recommends assessing potential mitigation options that will ensure residential values are not impacted by noise generated from these types of facilities.

Criteria #10:

**Whether the zoning regulations have been made with a view to encouraging the most appropriate use of land throughout the jurisdictional area.**

Staff has not found that this criterion is likely to be impacted by either proposal. The Map Correction is limited in scope given other considerations and likely to have minimal impact on this criterion. The Data Center use is potentially viable for infrastructure improvements, as well as providing a service to surrounding areas.

**RECOMMENDATION**

The recommendations before you are for consideration today for the public to have an opportunity to voice their approval or concerns. These changes will be forwarded to the Commissioners where the public will again be able to address any additional questions or concerns.



### **MOTIONS FOR CONSIDERATION**

1. The Planning Board, after reviewing the staff report and proposed regulation changes for compliance with the criteria and guidelines for zoning regulations MCA 76-2-203, adopt the staff report and recommend to the Board of County Commissioners that the request to correct the Zoning Map to rezone the subject parcels owned by NorthWestern Energy from Open Space to Agriculture, Section 4 of the CCZR, and amend Section 2 (Definitions), and Section 18.1 (Uses Permitted Upon Issuance of an Unclassified Use Permit)” be **denied**;

OR:

2. The Planning Board, after reviewing the staff report and proposed regulation changes for compliance with the criteria and guidelines for zoning regulations MCA 76-2-203, adopt the staff report and recommend to the Board of County Commissioners that the request to correct the Zoning Map to rezone the subject parcels owned by NorthWestern Energy from Open Space to Agriculture, Section 4 of the CCZR, and amend Section 2 (Definitions), and Section 18.1 (Uses Permitted Upon Issuance of an Unclassified Use Permit)” be **approved**.

Attachments: Conservation Easements, Map Exhibit, Exhibit A “Parcel List”, & Resolution of Intent # 20-07.

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REEL 327

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A-54161

# LEWIS AND CLARK HERITAGE GREENWAY DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is made this 22nd day of July, 1999, by **THE MONTANA POWER COMPANY**, whose address is 40 East Broadway, Butte, MT 59710, (Grantor), to **THE CONSERVATION FUND**, whose address is 1800 North Kent Street, Suite 1120, Arlington, VA, 22209, (Grantee).

## I. RECITALS

A. The Grantor owns real property in Cascade County, Montana (the "Land"), described in Exhibit A, attached hereto and incorporated herein by this reference, with open space values worthy of perpetual conservation, and on which the Grantee desires to obtain a conservation easement.

B. The Grantor's Land contains approximately ten miles of frontage on the Missouri River, which is a river with important scenic resources.

C. The Grantor wishes to protect and conserve the Land so as to protect and enhance the open space resources where consistent with its hydropower production and power transmission activities as described in, but not limited to, the Grantor's application for a new Federal Energy Regulatory Commission (FERC) Project # 2188 Missouri-Madison license.

D. The Grantor and the Grantee have reached an agreement, as reflected below, that will provide protection of the Land, while allowing the Grantor to pursue its business opportunities. It is Grantor's wish to implement a policy to consolidate power lines and substations in certain areas to the extent practicable to reduce visual impacts when siting, constructing, replacing, and upgrading facilities. The quality of the visual resource will be a primary concern.

E. The Grantee plans to assign this conservation easement to the State of Montana.

## II. GRANT

In consideration of the sums paid by the Grantee, and in further consideration of the recitals, mutual covenants and terms contained in this Easement and pursuant to the Open-Space and Voluntary Conservation Easement Act, §76-6-101, et seq.; §§87-1-209 and 87-1-605; and Title 70, chapter 17, MCA, Grantor voluntarily grants and conveys to the Grantee and the Grantee accepts a conservation easement in perpetuity, consisting of the following rights and restrictions over and across the Land.

RECORDED OCT 29 1999  
TIME 2:30 P.M.  
DOCUMENT NO. \_\_\_\_\_  
RITA HUDAK  
Clerk and Recorder  
Cascade County, Montana  
By [Signature] Deputy

84.25  
16-  
100.25  
JK

Conservation Easement - Final

Ret Lo: FAT

### III. PURPOSE

The purposes of this Easement are to preserve and protect in perpetuity the open space values of the Land. The Grantor and the Grantee intend that this Easement will limit the use of the Land to directly related land management activities necessary to accomplish the purposes of this Easement and other activities allowed in this Easement.

### IV. GRANTEE'S RIGHTS

The rights conveyed to the Grantee by this Easement are:

1. The right to enforce the provisions and purposes of this Easement.
2. The right to prevent any activity on or use of the Land that is inconsistent with this Easement.
3. The right to require the restoration of any areas or features of the Land that may be damaged by inconsistent activity or use by the Grantor.
4. The right to review and comment on the quality of the visual resource as may be impacted by the Grantor's exercise of the rights retained herein. However, the Grantee's right to review and comment shall not prohibit the Grantor from exercising its rights. The Grantee will be notified in writing in advance of Grantor's intended exercise of its rights. The Grantee shall respond with its comments within 30 days of Grantor's notice. Lack of response shall be interpreted as the Grantee having no comment.
5. The right to negotiate a third party access agreement with the Grantor for the purpose of public hunting according to a management plan developed in cooperation with the Grantor and in accordance with, and not diminishing the Grantor's rights as set forth under this Conservation Easement.

### V. GRANTOR'S RESERVED RIGHTS

Grantor reserves to itself, its successors, and assigns, all rights accruing from its ownership of the Land, including the right to engage in or permit others to engage in all uses of the land that are not expressly prohibited or restricted by this Easement and are not inconsistent with the purposes of this easement. Without limiting the generality of the previous statement and subject to the restrictions on Grantor's land and activities in this easement, Grantor reserves to itself, its successors and assigns the following rights:

1. The right to regulate public use of the Land at all times.
2. The right to continued access over and across the Land.

3. The right to restrict access during periods of construction related activities and for public safety.
4. The right to change the Project 2188 boundary /(ies) as approved by FERC or its successor.
5. The right to operate, maintain, replace, repair, upgrade, remove and construct electric, gas and telephone transmission and distribution lines and related facilities including but not limited to overhead and underground lines, substations, access roads and communication lines and facilities.
6. The right to remove gravel and fill material for power generation and transmission related activities at sites designated on Exhibit B unless otherwise agreed to in writing by the parties.
7. The right to operate, maintain, replace, repair, upgrade, remove and construct hydroelectric plant sites and related facilities, including, but not limited to, offices, warehouses, and shop buildings.
8. The right to maintain and use burn sites for power generation and transmission related activities at sites designated on Exhibit B unless otherwise agreed to in writing by the parties.
9. The right to conduct activities on the Land related to and necessary for the operation of the hydropower generating and transmission facilities.
10. The right to fence, gate and post with signs.
11. The right to grant third party access including but not limited to the right to continue the grant of existing use to the Missouri River Shooters Association, the Cascade County Conservation District conservation area, Sheffels Farms use agreement, public hunting according to a management plan developed in cooperation with the Grantee, and to grant a public trail access easement. Further, the right to maintain access for activities directly related to the right to operate, maintain, replace, repair, upgrade, remove and construct electric, gas and telephone transmission and distribution lines and related facilities including but not limited to overhead and underground lines, substations, access roads and communication lines and facilities.

12. The right to respond to emergency situations as necessary without prior consultation with the Grantee.
13. The right to allow livestock grazing subject to the approval of the Grantee according to a management plan developed in cooperation with the Grantee.

## VI. RESTRICTIONS ON GRANTOR'S LAND AND ACTIVITIES

Any activity on or use of the Land that is inconsistent with the purposes of this Easement is prohibited. Without limiting this general prohibition, the following activities and uses are expressly prohibited or restricted.

1. The legal or de facto subdivision of the Land for residential use or residential development purpose is prohibited. For purposes of this Easement, a subdivision means a division of land or land so divided that creates one or more parcels, in order that the title to or possession of the parcels may be sold, rented, leased or otherwise conveyed in any manner for residential use, and includes any resubdivision and a condominium or area, regardless of its size, that provides or will provide multiple spaces for residential use, recreational camping vehicles, or mobile homes. The prohibitions against subdivision contained in this paragraph shall also apply to the sale, rental, lease or other conveyance of the Land or any portion of the Land that was divided or subdivided in parcels or tracts of record prior to the grant of this Easement to the Grantee. However, the Grantor shall have the right to divide for the purposes of exercising its rights reserved in this Easement as specified in Paragraph V.
2. Cultivation or farming on the Land is prohibited. Livestock grazing without the approval of the Grantee is prohibited.
3. The cutting, burning, chemical treatment or other manipulation or killing or removal of woody vegetation is prohibited, except as approved by the Grantee, or except incidental to the exercise of Grantor's retained rights. The Grantee's approval under this paragraph will be based on reasonable measures being undertaken to prevent damage to woody vegetation, and to save woody vegetation for replanting on the Land.
4. The exploration of or development and extraction of minerals, coal, bentonite, hydrocarbons, soils or other materials by any surface mining method on the Land is prohibited, except as reserved under Grantor's Reserved Rights as specified in Paragraph V.
5. The construction or placement of any structure, building or improvements of any kind on the Land is prohibited, other than as expressly allowed in this Easement.
6. The dumping or other disposal of wastes, refuse and debris on the Land is prohibited, except for burning combustible materials as allowed by state law at historic or existing burn sites, and except for placing of material incidental to activities expressly allowed in this Easement.

7. The use of the Land in connection with a game farm, game bird farm, shooting preserve, fur farm, zoo or menagerie is prohibited. This prohibition does not apply to domestic livestock.
8. Accept as provided under V., paragraph 11, the granting of preferential third party access uses such as, but not limited to, exclusive hunting and commercial outfitting is prohibited.
9. The use of motorized vehicles off of existing roadways except for use in the exercise of Grantor's reserved rights is prohibited.

## VII. NOTICES

Any notice, request or demand provided for in this Easement shall be confirmed in writing, unless otherwise noted, and shall be made as specified below:

**Grantor:**

MPC  
LES Department  
40 East Broadway  
Butte, MT  
 Attn: Pat Asay

**Grantee:**

The Conservation Fund  
1800 N Kent Street, Suite 1120  
Arlington, VA 22209-2156  
Attn. Richard L. Erdmann

A notice sent by facsimile transmission shall be deemed received by the close of the business day on which such notice was transmitted or such earlier time as confirmed by the receiving party and notice by overnight mail or courier shall be deemed to have been received two (2) business days after it was sent or such earlier time as is confirmed by the receiving party unless it confirms a prior verbal communication in which case any such notice shall be deemed received on the day sent.

## VIII. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES

If the Grantor or the Grantee determines that the other has violated the terms of this Easement or that a violation is threatened, the party shall give written notice to the other of the violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Land resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Land so damaged. If the party in violation fails to cure the violation within thirty (30) days after receipt of notice, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally corrected, the Grantor or Grantee, as the case may be, may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction, and to recover any damages to which it may be entitled for violation of the terms of this Easement.

If either party, in its sole discretion, determines that circumstances require immediate action

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to prevent or mitigate significant damage, or to enforce its rights under this Easement, the party may pursue its remedies under this paragraph without prior notice to the other or without waiting for the period provided for cure to expire.

#### **IX. HOLD HARMLESS**

The Grantor shall hold harmless, indemnify and defend the Grantee and its employees, agents and contractors from against all liabilities, penalties, costs, losses, damages, expenses (including reasonable attorneys' fees and court costs incurred enforcing this indemnity obligation or defending a third party claim) causes of action, claims, demands, or judgments, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to occurring on or about the Land, regardless of cause, unless due to the negligence or willful misconduct of the Grantee or its agents, employees or contractors.

The Grantee similarly agrees to hold harmless, indemnify and defend the Grantor and their employees, agents and contractors from and against all liabilities, penalties, costs, losses, damages, expenses (including reasonable attorneys' fees and court costs incurred enforcing this indemnity obligation or defending a third party claim) causes of action, claims, demands or judgments, including without limitation, reasonable attorneys' fees arising from or in any way connected with injury to or the death of any person or physical damage to any property, resulting from any action, omission, condition or other matter related to Grantor's exercise of its rights reserved under this Easement, unless the action, or omission or condition is due to the negligence or willful misconduct of the Grantor or his employees, agents or contractors.



## X. RECORDATION

The Grantee shall record this instrument or an abstract of it in a timely fashion in the official records of Cascade County, Montana, and may rerecord it at any time as may be required to preserve its rights in this Easement.

## XI. GENERAL PROVISIONS

1. Controlling Law. The interpretation and performance of this Easement is governed by the laws of the state of Montana.
2. Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of §76-6-101, et seq., and Title 70, MCA. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement.
4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.
5. Successors. This Easement shall be binding upon, and inure to the benefit of, the parties, their heirs, administrators, apportionees, successors and assigns, and shall continue as a servitude running in perpetuity with the Land.
6. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer shall survive the transfer.
7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement shall not be affected.
8. Amendment. This Easement may be amended from time to time by mutual consent of the parties.
10. Assignment. This Easement is transferable, but the Grantee may assign this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under the laws of the State of Montana. As a condition of such



transfer, the Grantee shall require that the conservation purposes that this grant is intended to advance, continue to be carried out.

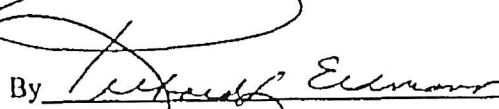
IN WITNESS WHEREOF, Grantor and Grantee have set their hands on the day and year first above written.

**MONTANA POWER COMPANY**

By 

Its Executive Vice President

**THE CONSERVATION FUND**

By 

Its SRP

STATE OF Montana )  
 )ss:  
COUNTY OF Silver Bow

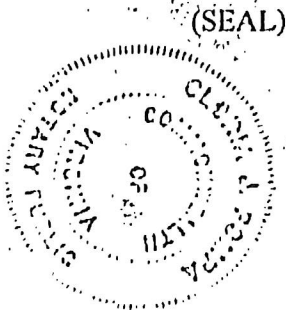
This instrument was acknowledged before me on the 22nd day of July,  
1999, by R.F. Croner.



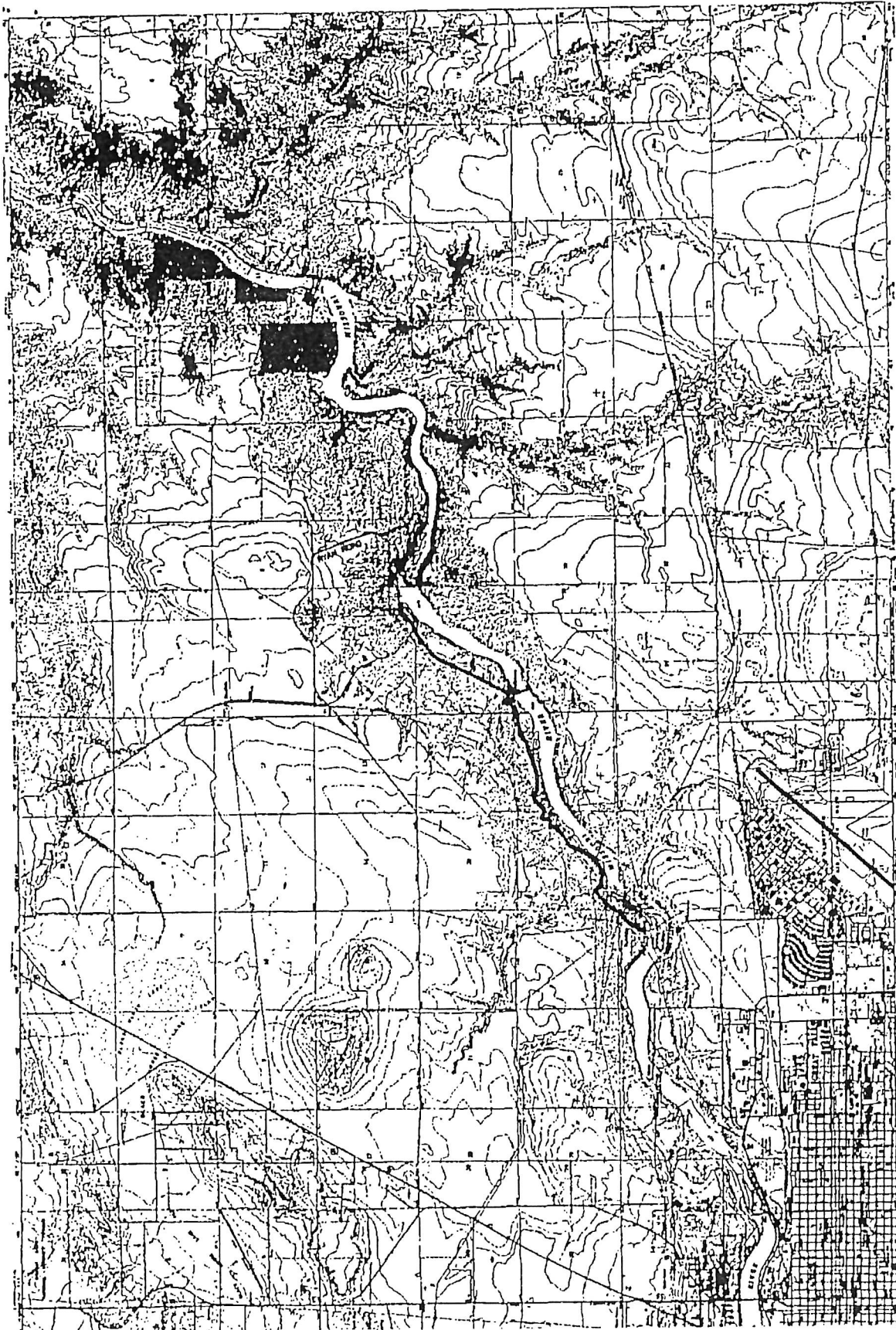
Karen M. Hendricks  
Notary Public for the State of Montana  
Residing at Butte, MT  
My Commission Expires 12-12-99

Commonwealth  
STATE OF VIRGINIA )  
 )ss:  
COUNTY OF Chilton

This instrument was acknowledged before me on the 28<sup>th</sup> day of October,  
1999, by Richard L. Edmonson, as Jr. Vice President  
of The Conservation Fund.



Gloria J. Pugh  
Notary Public for the State of Virginia  
Residing at Chilmark, Virginia  
My Commission Expires 3/31/2002



1:25,000  
NORTH SHORE CONSERVATION CADDISFLY  
TRAIL & CLARK MOUNTAIN CREEK  
MOUNTAIN CUP / SACRAMENTO SPRINGS  
TRAIL & CLARK MOUNTAIN CREEK

TRAIL  
SERVING ROAD / PEDESTRIAN / BICYCLE TRAIL  
PEDESTRIAN / BICYCLE TRAIL

TRAIL PROJECT BOUNDARY  
TRAIL ROAD

EXHIBIT "A"  
CONSERVATION AREA MAP  
TRAIL & CLARK MOUNTAIN CREEK

EXHIBIT 'A'

**All of the following portions of land lying North of the Montana Power Project No. 2188 boundary, as it exists at the time of conveyance:**

**TOWNSHIP 21 NORTH, RANGE 4 EAST, MONTANA PRINCIPAL MERIDIAN, CASCADE COUNTY, MONTANA:**

- Section 24: All that portion lying and being Southeast of the Southeasterly line of the right-of-way of the Great Northern Railway Company's right-of-way, as said right-of-way now exists.
- Section 25: Lots 1, 2, 3, & 4, the NW $\frac{1}{4}$ NW $\frac{1}{4}$
- Section 26: Lots 1, 2, 6 & 7, the W $\frac{1}{2}$ NE $\frac{1}{4}$ , the NE $\frac{1}{4}$ NE $\frac{1}{4}$ , the S $\frac{1}{2}$ NW $\frac{1}{4}$ , and the N $\frac{1}{2}$ SW $\frac{1}{4}$
- Section 27: NE $\frac{1}{4}$ SE $\frac{1}{4}$  and S $\frac{1}{2}$ S $\frac{1}{2}$
- Section 28: S $\frac{1}{2}$ S $\frac{1}{2}$
- Section 33: Lots 1 and 2 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$
- Section 34: Lots 1, 2, 3 & 4

TOWNSHIP 21 NORTH, RANGE 5 EAST, MONTANA PRINCIPAL  
MERIDIAN, CASCADE COUNTY, MONTANA:

Section 10:

Tract No. 1

Beginning at the South quarter section corner of Section 10, Township 21 North, Range 5 East, Montana Meridian, being the Southeast corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 10, and running thence Northerly on the mid section line North 0°06' West 205.9 feet to a point; thence Westerly on a line South 89°54' West 93.0 feet; thence Southwesterly on a line South 44°54' West 289.2 feet to a point on the South section line of said Section 10; thence Easterly on a line North 89°54' East 297.0 feet upon said section line to the point of beginning.

Tract 2

Beginning at a point on the South line of said SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, Township 21 North, Range 5 East, Montana Meridian, 398.5 feet West of the South quarter corner of said Section 10; thence Northwesterly on a line North 45°06' West 60.0 feet; thence Westerly on a line South 89°54' West 66.5 feet; thence Southwesterly on a line South 44°54' West 60.0 feet to the South line of said Section 10; thence Easterly on said section line North 89°54' East 150.0 feet to the point of beginning.

Tract 3

Beginning at a point on the South line of said SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, Township 21 North of Range 5 East, Montana Meridian, 620.0 feet West of the South quarter corner of said Section 10; thence Northerly on a line North 0°06' West 40.0 feet; thence Westerly on a line South 89°54' West 90.0 feet; thence Southerly on a line South 0°06" East 40.0 feet to said South line of Section 10; thence Easterly on said section line North 89°54' East 90.0 feet to the point of beginning.

*[The descriptions of the aforesaid Tracts 1, 2 & 3, transcribed as shown in that certain Decree, dated and filed March 29, 1933 in Case No. 22405, recorded in Book 7 of Orders and Decrees at Page 572, and as amended by that certain Affidavit filed of record August 10, 1999 in Reel 324, Document 899]*

- Section 15: Lots 3, 4, 5, 10, & 11
- Section 16: Lots 1, 2 and 3, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , the NE $\frac{1}{4}$ , the N $\frac{1}{2}$ SE $\frac{1}{4}$  and the N $\frac{1}{2}$ SW $\frac{1}{4}$
- Section 17: N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$  and the N $\frac{1}{2}$ S $\frac{1}{2}$
- Section 18: Lot 5
- Section 19: Lots 3, 4, 5, 6, 7 & 8, the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$
- LESS AND EXCEPTING THEREFROM that portion conveyed to Cascade County by Warranty Deed filed of record May 23, 1923 in Book 115 of Deeds at page 273
- Section 21: Lots 1 & 2
- Section 22: Lot 2
- Section 30: Lot 1



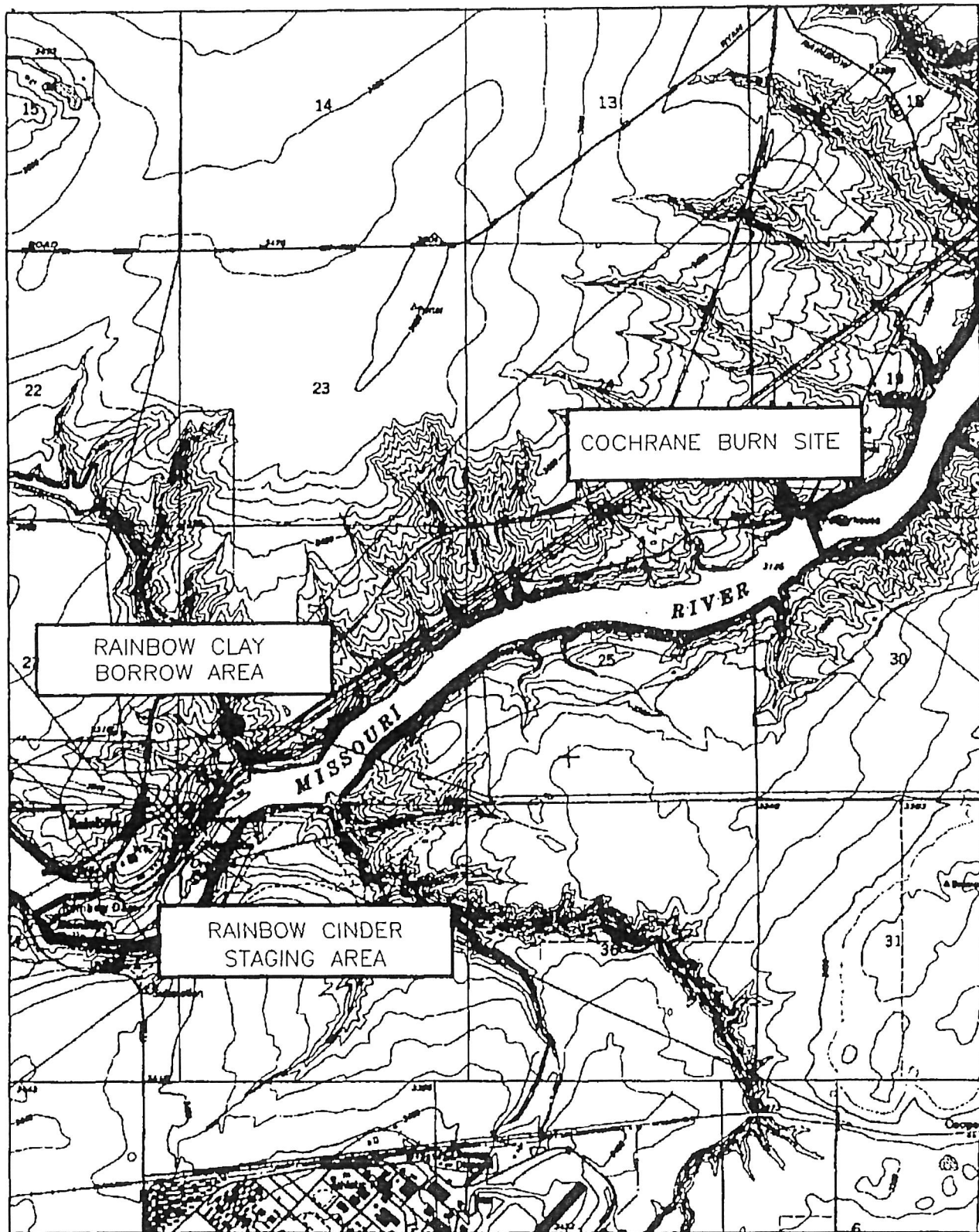


EXHIBIT "B"  
BURN SITES and BORROW AREAS

980135-E6-2A-0  
DRAWN BY MJE 5/18/99

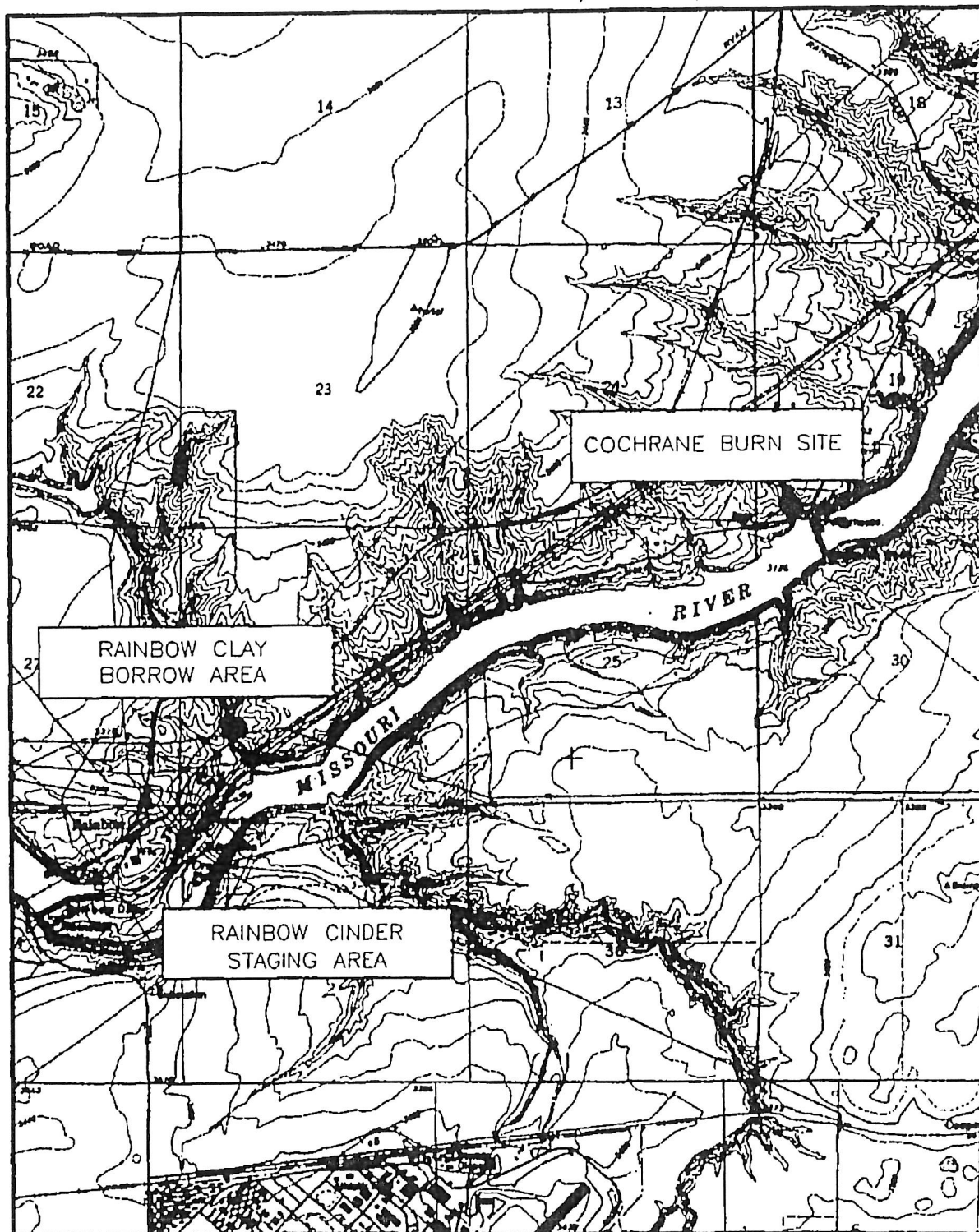


EXHIBIT "B"  
BURN SITES and BORROW AREAS

980135-E6-2A-0  
DRAWN BY MJE 5/18/99



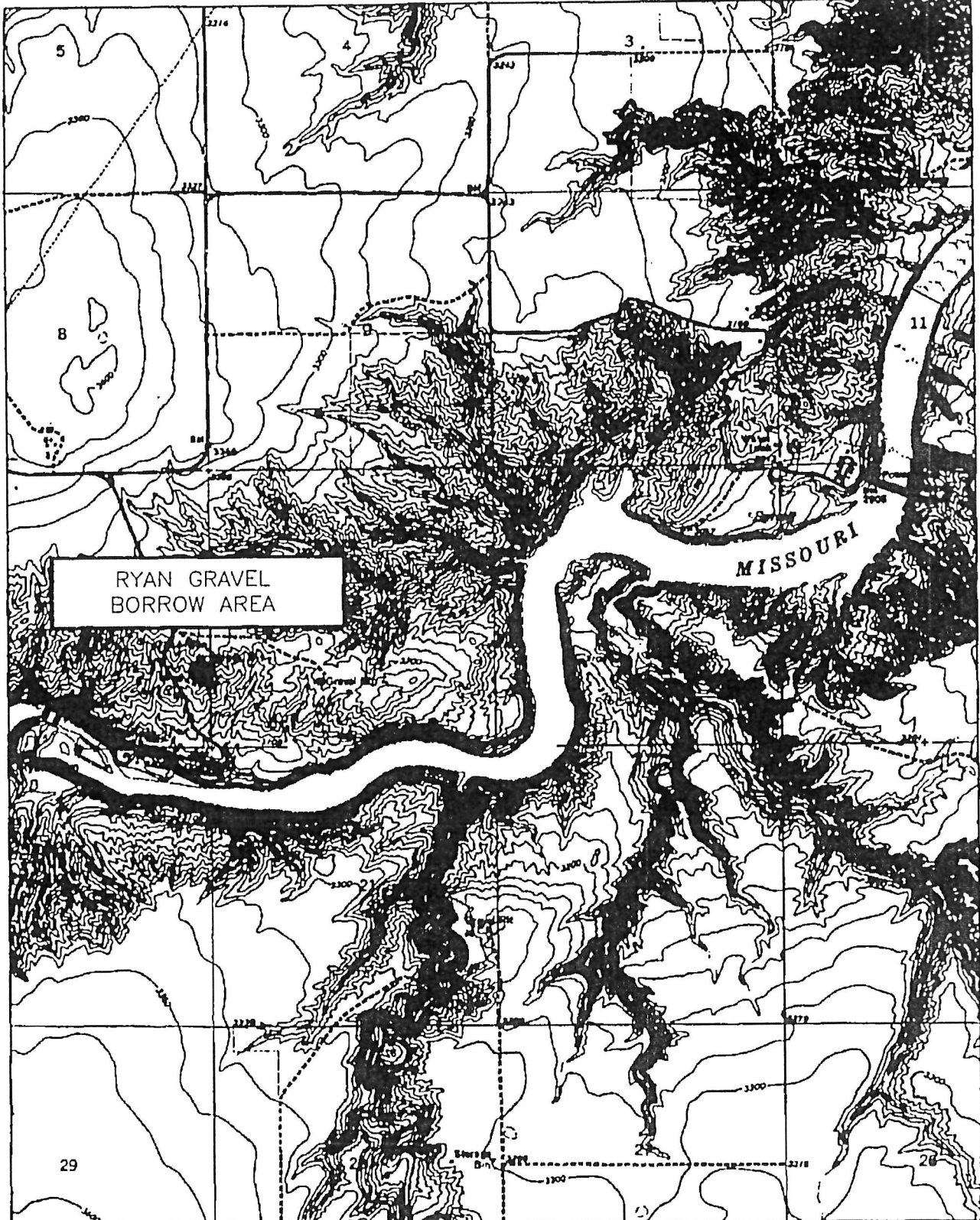


EXHIBIT "B"  
BURN SITES and BORROW AREAS

980135-E6-2B-0  
DRAWN BY MJE 9/15/99

(2)

REEL 327

Docu  
ment

811

144/27

A-54161

## LEWIS AND CLARK HERITAGE TRAIL

### NORTH SHORE TRAIL EASEMENT

This Easement Agreement is made and entered into this 22nd day of July, 1999, by and between The Montana Power Company, 40 East Broadway, Butte, Montana 59701, (Grantor) and The Conservation Fund, 1800 North Kent Street, Suite 1120, Arlington, VA, 22209 (Grantee).

### RECITALS

- A. Grantor is the owner of real property described in Exhibit A, attached and incorporated by reference, near or adjacent to the north shore of the Missouri River, between Black Eagle and Morony Dams.
- B. Grantee wishes to participate in the construction and maintenance of a pedestrian and bicycle path and trailheads, known as the "Lewis and Clark North Shore Trail", a portion of which will cross the above described property;
- C. River's Edge Trail which includes the Lewis and Clark North Shore Trail is supported in phases of design, development, operations and maintenance through an existing Memorandum of Understanding among the City of Great Falls, Recreational Trails, Inc., and Montana Department of Fish, Wildlife and Parks (MFWP) for the South Shore Trail. This trail easement is consistent with that MOU and serves as a hike/pedestrian connection between the Sulphur Springs Trailhead and County Road at Rainbow Dam property on the easterly edge of this easement.
- D. Grantee wishes to obtain an easement ("Trail Easement") for the construction and maintenance of the section of the "Lewis and Clark North Shore Trail" that crosses Grantor's land.
- E. The centerline of the trail was previously mapped and is depicted on and shown in Exhibit A.
- F. Grantor desires to contribute to trail construction and management costs set forth by separate agreement (the "Management Agreement") and in accordance with funding commitments set forth in the FERC 2188 Project license.
- G. Grantor and Grantee understand Grantee may assign this easement to the State of Montana for management by MFWP.

In consideration of the payments, covenants, and agreements hereinafter recited, it is agreed as follows:

1. **Purpose of Easement.** Grantor, grants and conveys to Grantee a perpetual Trail Easement for the purpose of constructing, maintaining, and repairing a pedestrian and bicycle trail for the Lewis and Clark North Shore Trail for the use and benefit of the public on, over, and across the real property in Cascade County, Montana, described in Exhibit A.

RECORDED OCT 29 1999  
TIME 2:30 - 2 M.  
DOCUMENT NO. \_\_\_\_\_

Trail Easement - Final

RITA HUDAK  
Clerk and Recorder  
Cascade County, Montana  
By [Signature]  
Deputy

29.50  
17-10-10- Rel Lo: FAT

2. **Dimensions and Improvements.**

- a. The trail easement is thirty (30) feet in width and shall be approximately centered on the mapped location of the Trail Easement set forth in Exhibit A. Within this Trail Easement Grantee may develop a primitive trail (gravel or dirt surface) to a width of no more than eight feet and place appropriate signs, rest benches, facilities to meet public health and safety requirements and other reasonably necessary trail improvements. The location of the trail and improvements will be agreed to by the parties in writing prior to the construction. The trail as constructed will become the actual centerline of the easement.
- b. Trailheads will be constructed in the vicinity of Rainbow Shop and at the intersection of Ryan Road and the Lewis and Clark North Shore Trail.

3. **Limitations on Development.** Grantor reserves the rights to continue administrative vehicular use of access on existing roadways and to construct, maintain, operate, remove, replace and reconstruct facilities related to its business operations on the easement area. However these rights shall not unreasonably interfere with the rights granted to Grantee.

4. **Construction and Maintenance of Trails and Roads.** Grantor agrees to grant Grantee reasonable access across Grantor lands to the Trail Easement during trail construction. Grantee agrees to reclaim and restore any areas which may be disturbed by the construction. Any trail constructed on the property shall be constructed and maintained in accordance with FERC License 2188 terms and shall be made and kept as safe as possible for the intended uses. Grantee, its cooperators and Grantor shall bear all expenses of maintenance of any trail and associated facilities that are constructed on the subject property as set forth in the Management Agreement. Grantee may use or authorize its agents and contractors to use motorized vehicles and equipment in the construction and maintenance of the trail.

5. **Maintenance of Trail Easement.** Grantee, or its designee, in cooperation with Grantor shall maintain and repair all trails constructed and developed within the scope of this Trail Easement as set forth by the Management Agreement. Maintenance shall ensure that the use of the trails does not pose a hazard to users of the trail and ensure that the trail does not cause unnecessary damage to the subject property. As a part of its maintenance of the trail, Grantee may control the vegetation within the easement area.

6. **Default.** If Grantee fails to maintain or repair the trail through the Land as provided in this Trail Easement, or fails to abide by any other terms of this Trail Easement, Grantor may give written notice to Grantee specifying the purported default. Grantee shall have thirty (30) days to cure the specified default. If Grantee fails to cure the default within the time required, Grantor may correct the deficiency and recover its reasonable costs for that maintenance or repair from Grantee.

7. **Hold Harmless.** Grantor shall hold harmless, indemnify and defend Grantee and its employees, agents and contractors from against all liabilities, penalties, costs, losses, damages, expenses (including reasonable attorneys' fees and court costs incurred enforcing this indemnity obligation or defending a third party claim) causes of action, claims, demands, or judgments, arising from or in any way connected with injury to or the death of any person, or physical damage to any

property, resulting from any act, omission, condition or other matter related to occurring on or about the Land, regardless of cause, unless due to the negligence or willful misconduct of Grantee or its agents, employees or contractors.

Grantee similarly agrees to hold harmless, indemnify and defend Grantor and their employees, agents and contractors from and against all liabilities, penalties, costs, losses, damages, expenses (including reasonable attorneys' fees and court costs incurred enforcing this indemnity obligation or defending a third party claim) causes of action, claims, demands or judgments, including without limitation, reasonable attorneys' fees arising from or in any way connected with injury to or the death of any person or physical damage to any property, resulting from any action, omission, condition or other matter related to Grantor's exercise of its rights reserved under this Easement, unless the action, or omission or condition is due to the negligence or willful misconduct of Grantor or its employees, agents or contractors.

8. **Recordation.** Grantee shall record this instrument or an abstract of it in a timely fashion in the official records of Cascade County, Montana, and may rerecord it at any time as may be required to preserve its rights in this Easement.

9. **Controlling Law.** The interpretation and performance of this Trail Easement is governed by the laws of the state of Montana.

10. **Construction.** Any general rule of construction to the contrary notwithstanding, this Trail Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Trail Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

11. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Trail Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Trail Easement, all of which are merged into this Trail Easement.

12. **No Forfeiture.** Nothing contained in this Trail Easement will result in a forfeiture or reversion of Landowner's reserved rights or title in any respect.

13. **Successors.** This Trail Easement shall be binding upon, and inure to the benefit of, the parties, their heirs, administrators, apportionees, successors and assigns, and shall continue as a servitude running in perpetuity with the Land.

14. **Termination of Rights and Obligations.** A party's rights and obligations under this Trail Easement terminate upon transfer of the party's interest in the Trail Easement or Land, except that liability for acts or omissions occurring prior to transfer shall survive the transfer.

15. **Severability.** If any provision of this Trail Easement is found to be invalid, the remainder of the provisions of this Trail Easement shall not be affected.

16. **Amendment.** This Easement may be amended from time to time by mutual consent of the  
Trail Easement - Final

parties.

17. **Notices.** Any notice, request, or demand provided for in this Easement shall be confirmed in writing, unless otherwise noted, and shall be made as specified below: a notice sent by facsimile transmission shall be deemed received by the close of the business day on which such notice was transmitted or such earlier time as confirmed by the receiving party and notice by overnight mail or courier shall be deemed to have been received two (2) business days after it was sent or such earlier time as is confirmed by the receiving party unless it confirms a prior verbal communication in which case any such notice shall be deemed received on the day sent.

Grantor:

X MPC  
LES Department  
40 East Broadway  
Butte, MT  
Attn: Pat Asay


Grantee:

The Conservation Fund  
1800 N. Kent St., Suite 1120  
Arlington, VA 22209-2156  
Attn. Richard L. Erdmann

18. **Assignment.** This Easement is transferable, but the Grantee may assign this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended ( or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under the laws of the State of Montana. As a condition of such transfer, the Grantee shall require that the conservation purposes that this grant is intended to advance, continue to be carried out.

IN WITNESS WHEREOF, Grantor and Grantee have set their hands on the day and year first above written.

THE MONTANA POWER COMPANY

By:   
Its: Executive Vice President



STATE OF MONTANA )  
County of Silver Bow )ss

This instrument was acknowledged before me on 7-28-99, by  
R. F. Cronen as \_\_\_\_\_ of The Montana Power  
Company.



Karen M. Hendrickson  
Notary Public for the State of Montana  
Residing at Butte, MT  
My Commission expires 12-15-2000

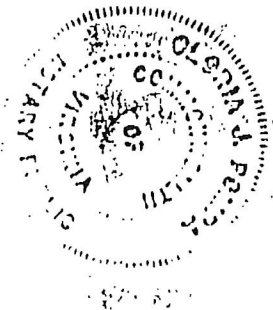
Accepted by THE CONSERVATION FUND

By: Richard L. Erdmann  
Its: SVP

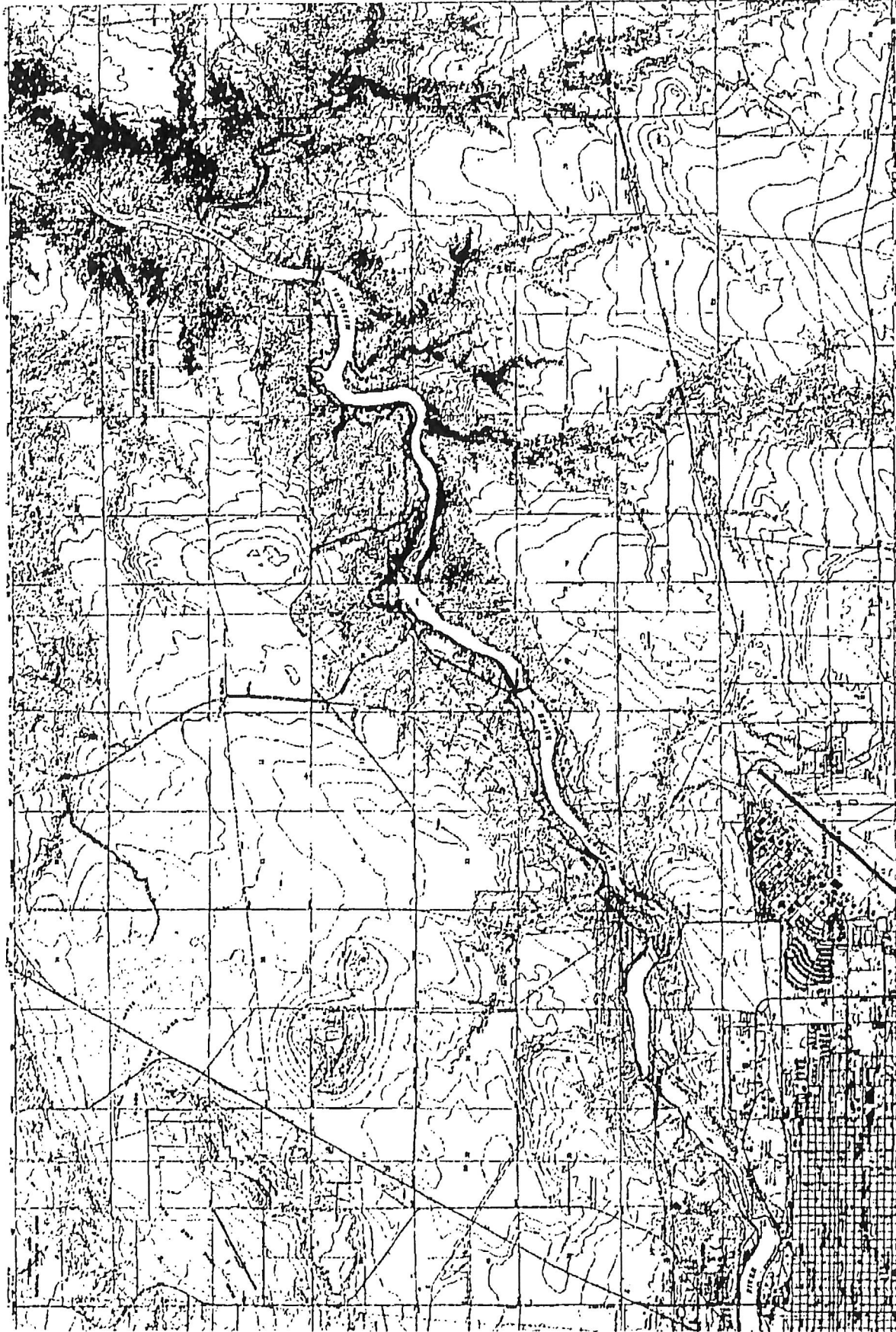
Commonwealth  
STATE OF VIRGINIA )  
County of Bedford )ss

This instrument was acknowledged before me on October 28, 1999,  
Richard L. Erdmann, as Sr. Vice President of The Conservation  
Fund.

(SEAL)



Gloria J. Pough  
Notary Public for the State of Virginia  
Residing at Bedford, Virginia  
My Commission expires 7/3/2002



REVISIONS  
DRAWN BY: [illegible]

DATE: [illegible]

SCALE: [illegible]

PROJECT: [illegible]

DATE: [illegible]

EXHIBIT "A"  
NORTH SHORE TWA LOCUS

EXHIBIT 'A'

The following describes property across which the Trail Easement is located. The actual location of the Trail Easement shall be centered on the mapped location indicated on the attached Trail Easement Maps No. 1 through No. 4:

TOWNSHIP 21 NORTH, RANGE 4 EAST, MONTANA PRINCIPAL MERIDIAN, CASCADE COUNTY, MONTANA:

- |             |   |
|-------------|---|
| Section 24: | SE $\frac{1}{4}$ SE $\frac{1}{4}$   |
| Section 25: | Lots 1, 2, 3, & 4, the NW $\frac{1}{4}$ NW $\frac{1}{4}$  |
| Section 26: | Lots 1, 2, 6 & 7, the NE $\frac{1}{4}$ NE $\frac{1}{4}$ , the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ |
| Section 27: | SE $\frac{1}{4}$ SE $\frac{1}{4}$   |
| Section 34: | Lots 1, 2, & 7  |
| Section 35: | Lot 3   |



TOWNSHIP 21 NORTH, RANGE 5 EAST, MONTANA PRINCIPAL  
MERIDIAN, CASCADE COUNTY, MONTANA:

Section 10:

Tract No. 1

Beginning at the South quarter section corner of Section 10, Township 21 North, Range 5 East, Montana Meridian, being the Southeast corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 10, and running thence Northerly on the mid section line North 0°06' West 205.9 feet to a point; thence Westerly on a line South 89°54' West 93.0 feet; thence Southwesterly on a line South 44°54' West 289.2 feet to a point on the South section line of said Section 10; thence Easterly on a line North 89°54' East 297.0 feet upon said section line to the point of beginning.

Tract 2

Beginning at a point on the South line of said SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, Township 21 North, Range 5 East, Montana Meridian, 398.5 feet West of the South quarter corner of said Section 10; thence Northwesterly on a line North 45°06' West 60.0 feet; thence Westerly on a line South 89°54' West 66.5 feet; thence Southwesterly on a line South 44°54' West 60.0 feet to the South line of said Section 10; thence Easterly on said section line North 89°54' East 150.0 feet to the point of beginning.

Tract 3

Beginning at a point on the South line of said SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, Township 21 North of Range 5 East, Montana Meridian, 620.0 feet West of the South quarter corner of said Section 10; thence Northerly on a line North 0°06' West 40.0 feet; thence Westerly on a line South 89°54' West 90.0 feet; thence Southerly on a line South 0°06" East 40.0 feet to said South line of Section 10; thence Easterly on said section line North 89°54' East 90.0 feet to the point of beginning.

*[The descriptions of the aforesaid Tracts 1, 2 & 3, transcribed as shown in that certain Decree, dated and filed March 29, 1933 in Case No. 22405, recorded in Book 7 of Orders and Decrees at Page 572, and as amended by that certain Affidavit filed of record August 10, 1999 in Reel 324, Document 899]*

- Section 15: Lots 3, 4, 5, 10, & 11
- Section 16: Lots 1, 2 and 3, the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , the E $\frac{1}{2}$ NE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SE $\frac{1}{4}$
- Section 17: Lots 1, 2 & 3, the SE $\frac{1}{4}$ SE $\frac{1}{4}$  and the N $\frac{1}{2}$  SW $\frac{1}{4}$
- Section 18: Lot 5
- Section 19: Lots 4, 5, 7 & 8, the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and the NW $\frac{1}{4}$ NE $\frac{1}{4}$

LESS AND EXCEPTING THEREFROM that portion conveyed to Cascade County by Warranty Deed filed of record May 23, 1923 in Book 115 of Deeds at page 273

- Section 20: Lots 1 & 2
- Section 21: Lots 1 & 2
- Section 22: Lot 2
- Section 30: Lot 1

**Further, the Trail Easement segments as surveyed and shown on the attached Easement Maps No. 3 and 4:**

- Section 11: SW $\frac{1}{4}$
- Section 14: NW $\frac{1}{4}$

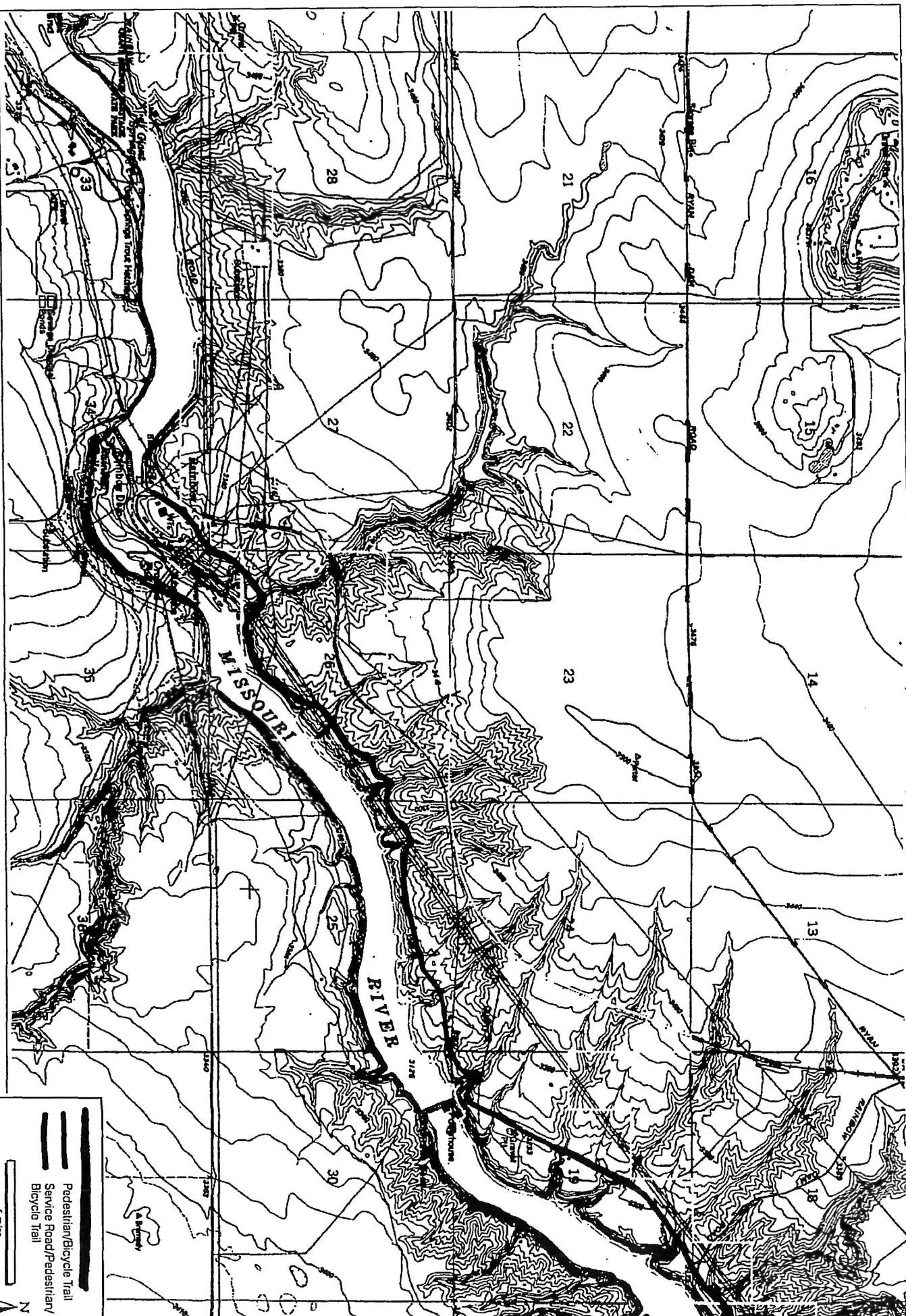


Figure 3a. LEWIS & CLARK HERITAGE GREENWAY — Trail Map

# TRAIL EASEMENT MAP 1

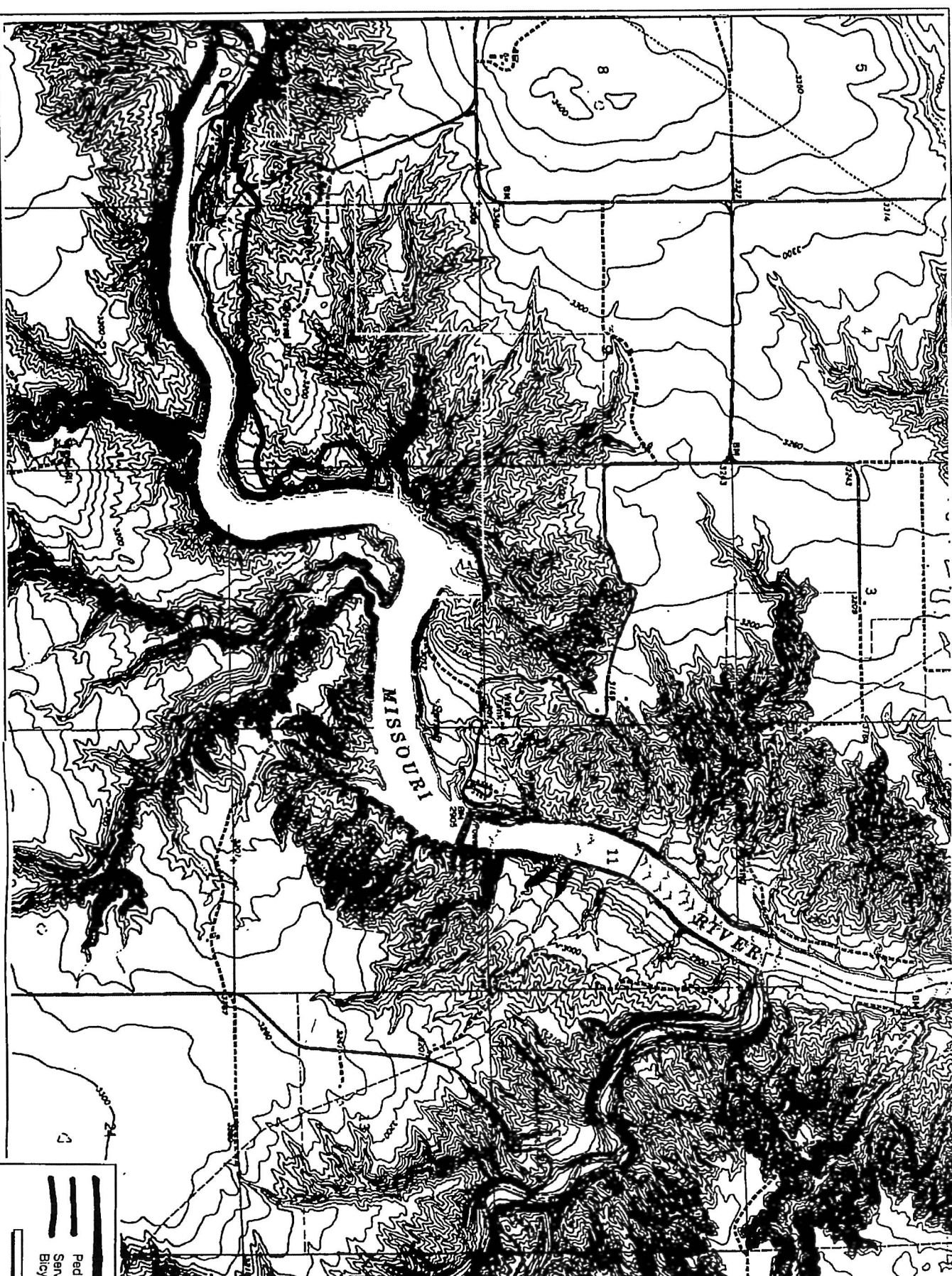


Figure 3b. LEWIS & CLARK HERITAGE GREENWAY — Trail Map

# TRAIL EASEMENT MAP 2



# EASEMENT EXHIBIT

REEL 327 DOCU 811  
MENT SW1/4

S. 10  
S. 11  
FOUND 3-1/4" BLK BRASS CAP

SW1/4

GOVERNMENT LOT 6

**LEGAL DESCRIPTION**  
A 30 foot wide access easement one-quarter (SW1/4) of Section 1 Range 5 East, Principal Meridian, County, Montana and being 15 feet following described centerline:

EAST, 1320' GLO & CALCULATED

NOTE: APPROXIMATE 1/16 LINE; EXACT LOCATION OF THIS LINE NOT DETERMINED BY THIS SURVEY

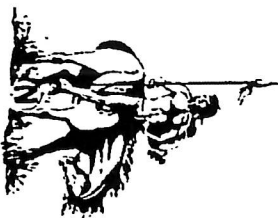
| LINE# | BEARING     | DISTANCE |
|-------|-------------|----------|
| L1    | N20°01'38"E | 332.73'  |
| L2    | N57°39'27"E | 149.00'  |
| L3    | N10°53'41"E | 128.76'  |
| L4    | N08°18'57"W | 36.05'   |
| L5    | N38°02'00"W | 73.42'   |
| L6    | N37°43'06"W | 62.43'   |
| L7    | N8°42'01"W  | 60.37'   |
| L8    | S43°34'30"W | 29.31'   |
| L9    | S59°50'48"W | 52.88'   |
| L10   | N03°28'57"E | 93.81'   |
| L11   | N28°01'26"E | 98.59'   |
| L12   | N07°59'39"E | 61.09'   |
| L13   | N48°32'47"E | 92.45'   |
| L14   | S89°58'23"E | 91.34'   |
| L15   | N65°02'07"E | 102.65'  |
| L16   | N14°00'00"E | 39.50'   |

N00°25'10"W, 2607.69'

1303.84'

1303.85'

S. 10  
S. 11  
FOUND 3-1/4" BLK BRASS CAP  
S. 15  
S. 14

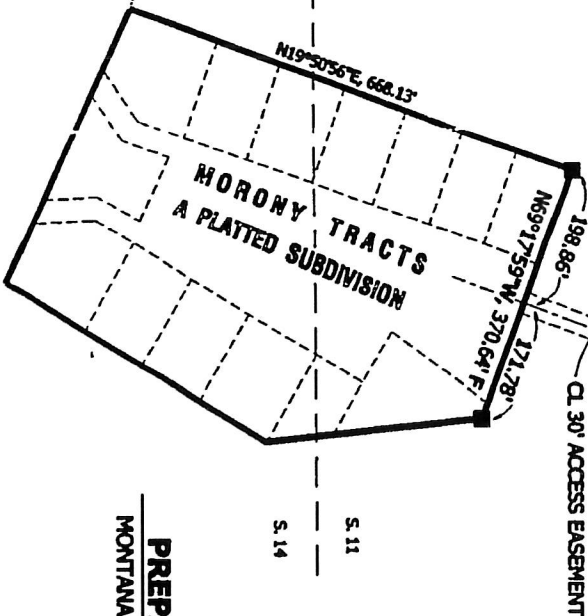


THE LINE: 57°40'35"E, 940.33' F

**EI & ASSOCIATES, INC.**  
PROFESSIONAL LAND SURVEYORS,  
ENGINEERS, & LAND PLANNERS  
P.O. BOX 16462, MISSOULA, MONTANA 59808  
(406) 549-5022; FAX (406) 549-5088  
SURVEY DATE: NOVEMBER, 1998  
PLAT DRAWN: JANUARY 20, 1999

## LEGEND

- FOUND 1" SQUARE BOLT
- CL CENTERLINE



## PREPARED FOR:

MONTANA POWER COMPANY

**SURVEYORS CERTIFICATION**  
I certify that this survey represents under my direct supervision in Montana

*Steven M. Inabnit, PLS*  
Steven M. Inabnit, PLS  
Montana Registration No. 9328  
President Eli & Associates, Inc.

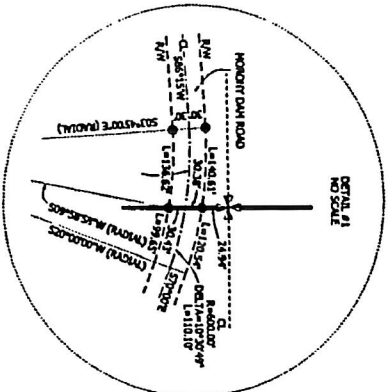
|           |   |
|-----------|---|
| 1/4       | X |
| PRINCIPAL |   |
| CON       |   |
| GO        |   |
| AC        |   |


|      |     |          |     |
|------|-----|----------|-----|
| REEL | 327 | DOCUMENT | 811 |
|------|-----|----------|-----|

| MODIFY DATA ROAD R/W DATA |            |
|---------------------------|------------|
| CURVE#                    | ARC LENGTH |
| C1                        | 120.54     |
| C2                        | 242.95     |
| C3                        | 165.11     |
| C4                        | 142.07     |
| C5                        | 259.70     |
| C6                        | 99.65      |
| C7                        | 570.00     |

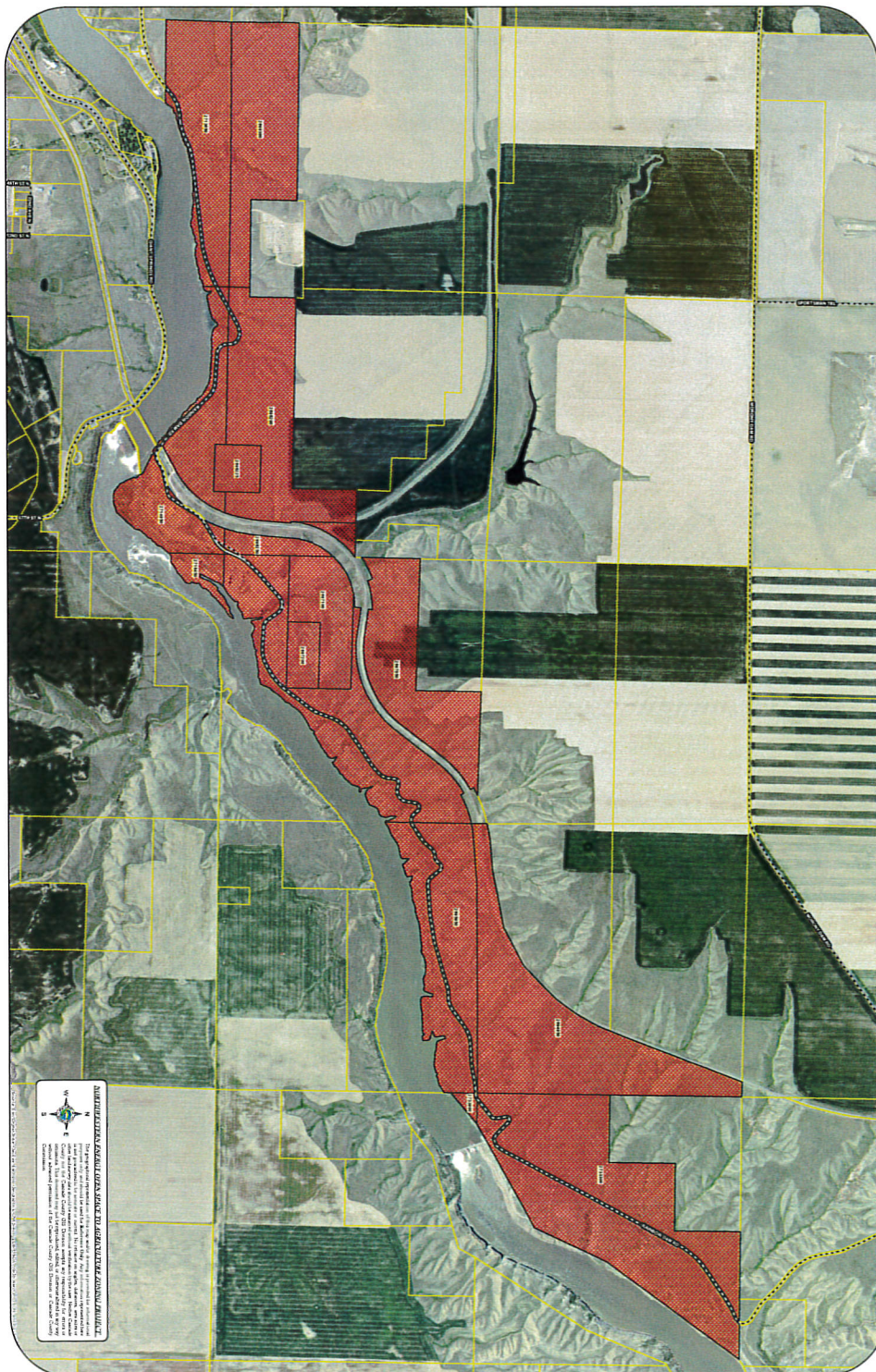
  

| LINE# | BEARING     | DISTANCE |
|-------|-------------|----------|
| L1    | N70°00'00"W | 60.28    |
| L2    | N86°00'00"E | 235.67   |
| L3    | N44°00'00"W | 120.50   |
| L4    | S64°00'00"E | 205.60   |
| L5    | S86°00'00"E | 235.67   |
| L6    | S70°00'00"E | 60.28    |



|   |     |     |    |
|---|-----|-----|----|
| 1/4   | SEC | T   | R  |
|  | 14  | 21N | 5E |
| PRINCIPLE MERIDIAN MONTANA  |     |     |    |
| COUNTY OF CASCADE   |     |     |    |
| SHEET 1 OF 1  |     |     |    |
| PREPARED FOR:<br>MONTANA POWER COMPANY  |     |     |    |





## Exhibit A

|                       |                              |
|-----------------------|------------------------------|
| Parcel 1: 0002697050  | Geo: 02-3139-26-1-01-01-0000 |
| Parcel 2: 0002697100  | Geo: 02-3139-26-3-02-01-0000 |
| Parcel 3: 0002697200  | Geo: 02-3139-26-3-01-01-0000 |
| Parcel 4: 0002698250  | Geo: 02-3139-27-4-01-02-0000 |
| Parcel 5: 0002716450  | Geo: 02-3139-35-2-02-01-0000 |
| Parcel 6: 0002714950  | Geo: 02-3139-34-1-01-01-0000 |
| Parcel 7: 0002698225  | Geo: 02-3139-27-2-03-01-0000 |
| Parcel 8: 0002698200  | Geo: 02-3139-27-4-01-01-0000 |
| Parcel 9: 0002699300  | Geo: 02-3139-28-3-03-01-0000 |
| Parcel 10: 0002713650 | Geo: 02-3139-33-1-01-01-0000 |
| Parcel 11: 0002695950 | Geo: 02-3139-25-1-01-01-0000 |
| Parcel 12: 0002694950 | Geo: 02-3139-24-4-04-01-0000 |
| Parcel 13: 0002733900 | Geo: 02-3140-30-2-02-01-0000 |
| Parcel 14: 0002733300 | Geo: 02-3140-19-3-01-01-0000 |

RETURN TO COMMISSION

BEFORE THE BOARD OF CASCADE COUNTY COMMISSIONERS

IN THE MATTER OF A RESOLUTION FOR  
PLANNING BOARD CONSIDERATION OF  
MAP AND TEXT AMENDMENTS TO THE  
CASCADE COUNTY ZONING REGULATIONS

RESOLUTION 20-07

**WHEREAS**, under the provision of Title 76, Chapter 2, Part 2, Montana Code Annotated, the Board of Commissioners is authorized to adopt zoning regulations; and

**WHEREAS**, a Zoning District and Regulations therefore was created by Resolution passed by the Board of County Commissioners on April 26, 2005, as documented as Resolution #05-018, on file in the Office of the Clerk and Recorder of Cascade County; and

**WHEREAS**, NorthWestern Energy (Northwestern Corporation) and Susteen, Inc. have proposed a lease agreement regarding the historic Rainbow Powerhouse and the potential development of a blockchain model data center (Data Center); and

**WHEREAS**, Planning staff was approached regarding development requirements for the Facility in early 2020, and identified several items of concern on preliminary review; and

**WHEREAS**, one such concern is that properties along the northern side of the Missouri River, including those containing the active hydroelectric Black Eagle and Rainbow power sites are zoned "Open Space", such designation being contrary to the dominant use of the land, a power generating facility regulated by the Federal Energy Regulatory Commission, and the local jurisdiction; and

**WHEREAS**, another concern is that the proposed Data Center use is not captured by the current Cascade County Zoning Regulations, which therefore makes such use allowable in the Heavy Industrial District, but not in any other district, where it may be suitable; and

**WHEREAS**, Northwestern Energy has conducted several extensive upgrades to the facility in the past, however failed to follow the standard permitting process, which would have likely been impeded by the current zoning designation and it is anticipated that future upgrades to either the Rainbow or Cochrane Dams could be impeded by the current zoning designation; and

**WHEREAS**, the Board of Cascade County Commissioners, being made aware of the foregoing concerns and is interested in resolving the outstanding zoning issue with the Rainbow Dam Powerplant, and facilitating the establishment of an emerging modern land-use; and

**WHEREAS**, in accordance with MCA § 76-2-204, and the Cascade County Zoning Regulations § 14, the Board of County Commissioners shall require the County Planning Board to act as a zoning commission to recommend boundaries and appropriate regulations for the various zoning districts.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of County Commissioners do hereby request the Cascade County Planning Board review and provide a recommendation regarding

**R0384804 CRS**

Total Pages: 6 R 0 00 By: mejohnson 03/10/2020 04:07:43 PM  
Cascade County, Rina Ft Moore - Clerk & Recorder



1. A proposed Map Amendment to the Cascade County Zoning Regulations to rezone, from Open Space to Agricultural, to include, at a minimum, the properties identified by the following reference numbers:

|                     |                                  |
|---------------------|----------------------------------|
| Parcel # 0002697050 | Geocode: 02-3139-26-1-01-01-0000 |
| Parcel # 0002697100 | Geocode: 02-3139-26-3-02-01-0000 |
| Parcel # 0002697200 | Geocode: 02-3139-26-3-01-01-0000 |
| Parcel # 0002698250 | Geocode: 02-3139-27-4-01-02-0000 |
| Parcel # 0002716450 | Geocode: 02-3139-35-2-02-01-0000 |
| Parcel # 0002714950 | Geocode: 02-3139-34-1-01-01-0000 |
| Parcel # 0002698225 | Geocode: 02-3139-27-2-03-01-0000 |
| Parcel # 0002698200 | Geocode: 02-3139-27-4-01-01-0000 |
| Parcel # 0002699300 | Geocode: 02-3139-28-3-03-01-0000 |
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| Parcel # 0002695950 | Geocode: 02-3139-25-1-01-01-0000 |
| Parcel # 0002694950 | Geocode: 02-3139-24-4-04-01-0000 |
| Parcel # 0002733900 | Geocode: 02-3140-30-2-02-01-0000 |
| Parcel # 0002733300 | Geocode: 02-3140-19-3-01-01-0000 |

2. A proposed Text Amendment to the Cascade County Zoning Regulations, to § 2 to include a Data Center definition, such as:

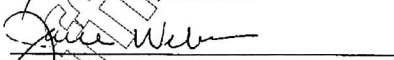
Data Center: A facility hosting a large group of networked computer servers typically used by organizations for the remote storage, processing, or distribution of large amounts of data.

3. A recommendation regarding a proposed Text Amendment to the Cascade County Zoning Regulations, to § 18.1 to include Data Center.

DATED this 10<sup>th</sup> day of March, 2020.

BOARD OF COUNTY COMMISSIONERS  
CASCADE COUNTY, MONTANA

  
James L. Larson, Chairman


  
Jane Weber, Commissioner

  
Joe Briggs, Commissioner



Attest

On this 10<sup>th</sup> day of March, 2020, I hereby attest the above-written signatures of the Board of Cascade County Commissioners.

  
Rina Fontana Moore, Cascade County Clerk and Recorder

\* APPROVED AS TO FORM:  
Josh Racki, County Attorney

  
DEPUTY COUNTY ATTORNEY

\* THE COUNTY ATTORNEY HAS PROVIDED ADVICE AND APPROVAL OF THE FOREGOING DOCUMENT LANGUAGE ON BEHALF OF THE BOARD OF CASCADE COUNTY COMMISSIONERS, AND NOT ON BEHALF OF OTHER PARTIES OR ENTITIES. REVIEW AND APPROVAL OF THIS DOCUMENT BY THE COUNTY ATTORNEY WAS CONDUCTED SOLELY FROM A LEGAL PERSPECTIVE AND FOR THE EXCLUSIVE BENEFIT OF CASCADE COUNTY. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE COUNSEL.

March 10, 2020

Agenda # 2

**Agenda Action Report  
Prepared for the  
Cascade County Commission**

|                         |   |
|-------------------------|---|
| <b>ITEM</b>             | <b>Commission action regarding Planning Board proposed Map and Text Amendments to the Cascade County Zoning Regulations</b> |
| <b>INITIATED BY</b>     | <b>Cascade County Commission - Planning Staff</b>   |
| <b>ACTION REQUESTED</b> | <b>County Commission Initiation of Map and Text Amendments for Planning Board consideration and Recommendation</b>          |
| <b>PRESENTED BY</b>     | <b>Sandor Hopkins, Interim Planning Director</b>  |

**BACKGROUND:** NorthWestern Energy (Northwestern Corporation) and Susteen, Inc have proposed a lease agreement regarding the historic Rainbow Powerhouse and the potential development of a blockchain model data center. Planning staff was approached regarding development requirements for the facility in early 2020, and identified several items of concern on preliminary review.

1. Properties along the northern side of the Missouri River, including those containing the active hydroelectric Black Eagle and Rainbow power sites are zoned "Open Space." This zoning designation is contrary to the dominant use of the land, a power generating facility regulated by the Federal Energy Regulatory Commission, and the local jurisdiction.
2. The proposed Data Center use is not captured by the current Cascade County Zoning Regulations. This would be allowable in the Heavy Industrial District, however is not called out in any other district, where it may be suitable.
3. Northwestern Energy has conducted several extensive upgrades to the facility in the past, however failed to follow the standard permitting process, which would have likely been impeded by the current zoning designation. It is anticipated that future upgrades to Rainbow or Cochrane Dams could be impeded by the current zoning designation.

In the interest of resolving the outstanding zoning issue with the Rainbow Dam Powerplant, and facilitating the establishment of an emerging modern land-use, and in coordination with the Cascade County Commission, the Planning Department, and the Attorney's Office, the following recommendation is presented for the Board's consideration.

**MOTION PROVIDED FOR CONSIDERATION:**

"I move that the Cascade County Commission request the Cascade County Planning Board review and provide a recommendation regarding a proposed Map Amendment to the Cascade County Zoning Regulations to rezone, from Open Space to Agricultural, the properties identified by the following reference numbers:

|                     |                                  |
|---------------------|----------------------------------|
| Parcel # 0002697050 | Geocode: 02-3139-26-1-01-01-0000 |
| Parcel # 0002697100 | Geocode: 02-3139-26-3-02-01-0000 |
| Parcel # 0002697200 | Geocode: 02-3139-26-3-01-01-0000 |
| Parcel # 0002698250 | Geocode: 02-3139-27-4-01-02-0000 |



|                    |                                  |
|--------------------|----------------------------------|
| Parcel #0002716450 | Geocode: 02-3139-35-2-02-01-0000 |
| Parcel #0002714950 | Geocode: 02-3139-34-1-01-01-0000 |
| Parcel #0002698225 | Geocode: 02-3139-27-2-03-01-0000 |
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| Parcel #0002733900 | Geocode: 02-3140-30-2-02-01-0000 |
| Parcel #0002733300 | Geocode: 02-3140-19-3-01-01-0000 |

And for the Cascade County Planning Board to review and provide a recommendation regarding a proposed Text Amendment to the Cascade County Zoning Regulations, to § 2 to include the following definition:

"Data Center: A facility hosting a large group of networked computer servers typically used by organizations for the remote storage, processing, or distribution of large amounts of data."

And for the Cascade County Planning Board to review and provide a recommendation regarding a proposed Text Amendment to the Cascade County Zoning Regulations, to § 18.1 to include the following:

"(14) Data Center."

Attachments: Map Exhibit

